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August 26, 1998

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AUG 2 6 1998

Magalie R. Salas, Esq. Secretary Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554 OFFICE OF THE SECRETARY

WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., is an original and fourteen (14) copies of his Motion to Strike.

Re:

Should the Commission have any questions with respect to this filing, please communicate with the undersigned.

Sincerely yours,

Aaron P. Shainis
Counsel for

JAMES A. KAY, JR.

Enclosure

Before The FEDERAL COMMUNICATIONS COMMISSION

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Washington, D. C. 20554 AUG 2 6 199

In Matter of)	OFFICE OF THE SECRETARY
James A. Kay, Jr.	WT DOCK	ET NO. 94-147
License of one hundred fifty two Part 90 licenses in the Los Angeles, California area)))	

To: The Commission

MOTION TO STRIKE

James A. Kay, Jr. ("Kay"), by his attorneys, respectfully requests that the Wireless Telecommunications Bureau's ("Bureau") "Opposition to Further Appeal," filed on August 25, 1998, be stricken. In support, the following is respectfully submitted.

The "Further Appeal" was filed by Kay on August 18, 1998. The time for filing the Bureau's Opposition is governed by Section 1.294(b) of the Commission's rules. That section states as follows:

(b) Except as provided in paragraph (c) of this section, oppositions shall be filed within four days after the original pleading is filed, and replies to oppositions will not be entertained.

The Bureau's Opposition pleading should have been filed on August 24, 1998. With neither an explanation, nor a request for leave to submit late filed pleading, predicated on good cause, the Bureau has merely filed its pleading in an obvious attempt to ignore the mandate of the rule. Accordingly, the pleading should be stricken and no consideration given to it.

Moreover, the pleading is riddled with inaccuracies and mischaracterizations. In this regard, in paragraph 4, the Bureau states, "Second, the Presiding Judge ultimately granted Kay and his counsel the relief requested." As specifically stated in the numerous pleadings that have been filed, no relief had ever been requested by Kay.

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator, in the law firm of Shainis & Peltzman, Chartered, do hereby certify that on this 26th day of August, 1998, copies of the foregoing document were sent, via hand delivery to the following:

Honorable Richard Sippel Administrative Law Judge Federal Communications Commission Suite 218 2000 L St., NW Washington, DC 20554-0003

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Wireless Telecommunications Bureau
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Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325-7245

Tynda F. Skiles

Via Facsimile

The Bureau also points to the case of *Baldwin Hardware Corp. v. Franksu Enterprise Corp.*, 78 F.3d 550, 557 (D.C.Cir. 1996), for the holding that "[t]o warrant recusal, bias or prejudice must be directed against a party and bias exhibited against an attorney will only merit recusal when it results in material and identifiable harm to that party's case." It is obvious when the Presiding Judge doubts counsel's religious beliefs acceptance of counsel's arguments relative to the merits of Mr. Kay's case becomes problematical. That is a "material and identifiable harm" to Mr. Kay's case. This is totally different from a refusal of a judge to accept an argument by counsel on substantive matters relative to the merits of the case. However, the refusal of the Judge to believe counsel concerning his religious beliefs are so fundamental and so personal that they shock the conscience. Moreover, the Judge's insensitivity and inappropriateness also is conduct that cannot be countenanced by the Commission.\(^1\)

In view of the foregoing, the Bureau's late-filed Opposition should be stricken.

By:

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Law Offices of Robert J. Keller, Esq.

4200 Wisconsin Avenue, N.W. #106-233 Washington, D.C. 20016-2143

Respectfully submitted, JAMES A. KAY, JR.

By: Aaron P. Shainis

Lee J. Peltzman

Robert J. Keller, Esq.

August 26, 1998

The Bureau itself agrees that the Judge's conduct was inappropriate. *See* Bureau Opposition at para. 4.